Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1995

LARRY CAMPBELL,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent,

Petition For Writ of Certiorari To the Texas Court of Appeals for the First Court of Appeals District

PETITION FOR WRIT OF CERTIORARI

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30 pp

QUESTION PRESENTED FOR REVIEW

The Defendant was charged with possession of cocaine and failure to pay tax on a controlled substance. The controlled substance tax statute provides that a "dealer" of drugs commits an offense if the dealer possesses a controlled substance on which the tax has not been paid. "Dealer" is defined as a person who imports, manufactures, produces, acquires, or possesses more than seven grams of a controlled substance. Does this deny the Defendant due process under the Fourteenth Amendment?

LIST OF PARTIES

Pursuant to SUP. CT. R. 14.1(b), the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case.

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Hon. Carroll E. Wilborn - Presiding Judge of the Trial Court.

344th Judicial District Court
Chambers County Courthouse
Anahuac, TX 77514

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CITATION TO OPINIONS BELOW

The opinion of the First Court of Appeals is not reported. It is included in the appendix to this writ. The opinion may also be retrieved electronically by citation to 1995 WL 457263.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on August 3, 1995. The Defendant's Petition for Discretionary Review was denied by the Texas Court of Criminal Appeals on October 11, 1995. This Court has jurisdiction pursuant to 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fourteenth Amendment to the United States Constitution reads in pertinent part:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law
> . . . .

The Texas tax statutes in question provide in pertinent part as follows:

> A dealer commits an offense if the dealer possesses a controlled substance on which the tax imposed by this chapter has not been paid.

TEX. TAX. CODE ANN. §159.201(Vernon 1995).

> "Dealer" means a person who in violation of the law of this state imports into this state or manufactures, produces, acquires, or possesses in this state:
>
> (A) seven grams or more of a taxable substance containing a controlled substance, or simulated controlled substance.

TEX. TAX. CODE ANN. §159.001(3)(Vernon 1995).

STATEMENT OF THE CASE

The Defendant was charged with possession of cocaine and failure to pay tax on a controlled substance. The two indictments were consolidated for trial. The Defendant pleaded guilty and was sentenced to ten years confinement and a $1000.00 fine on the possession offense and five years confinement and a $52,800.00 fine on the tax count. The Defendant then appealed to the court of appeals, where he argued that the controlled substance tax statute was unconstitutional because the definition of "dealer" denied him due process of law. *See Campbell v. State*, --- S.W.2d ---,

(Tex. App. - Houston [1st Dist.] 1995, pet. ref'd)(1995 WL 457263). After the court of appeals affirmed his convictions, the Defendant filed a Petition for Discretionary Review with the Court of Criminal Appeals. Defendant's petition was denied on October, 11, 1995. This Petition for Writ of Certiorari is timely filed within 90 days of the entry of the order denying review. *See* SUP. CT. R. 13.1.

SUMMARY OF THE ARGUMENT

Sections 159.201 and 159.001(3) of the Texas Tax Code are unconstitutional on their face because the definition of "dealer" creates a mandatory or permissive presumption of fact that is inconsistent with the due process requirements of the Fourteenth Amendment.

ARGUMENT

A Defendant is not prohibited from raising some constitutional violations even after a plea of guilty. *Menna v. New York*, 423 U.S. 61, 96 S.Ct. 241 (1975); *Blackledge v. Perry*, 417 U.S. 21, 30, 94 S.Ct. 2098, 2104 (1974). The question is whether the constitutional violation would stand in the way of conviction even if factual guilt is established. *Menna v. New York*, 423 U.S. 61, 63 n. 2, 96 S.Ct. 241, 242 n. 2 (1975). The Petitioner asserts that his plea of guilty does not prohibit him from challenging the facial unconstitutionality of the criminal statute upon which his conviction lies. A conviction obtained upon a facially unconstitutional statute is invalid despite an admission of factual guilt.

A. The operation of TEX. TAX CODE ANN. §§159.201 and159.001(3) create an unconstitutional mandatory statutory presumption of an elemental fact.

Appellant was charged with the offenses of possession of a controlled substance[1] and failure to pay tax on a controlled substance. *See Campbell v. State*, --- S.W.2d ---, (Tex. App. - Houston [1st Dist.] 1995, pet. ref'd)(1995 WL 457263). Section 159.201 of the Texas Tax code defines the elements of the offense of failure to pay a controlled substance tax. It is an offense for a dealer to possess a controlled substance on which the tax imposed has not been paid. TEX. TAX CODE ANN. 159.201. The definition of "dealer" presumes that one who possesses more than seven grams of a controlled substance is a dealer. TEX. TAX CODE ANN. §159.001(3)(A)(Vernon 1995). The applicable portion of §159.001(3) reads as follows:

> "Dealer" means a person who in violation of the law of this state imports into this state or manufactures, produces, acquires, or possesses in this state:
>
> (A) seven grams or more of a taxable substance containing a controlled substance, a counterfeit substance, or simulated controlled substance.

---

[1] The Defendant was not charged with the higher offense of delivery of a controlled susbstance or possession with intent to deliver a controlled substance.

TEX. TAX. CODE ANN. §159.001(3)(A)(Vernon 1995).

The simultaneous operation of Sections 159.201 and 159.001 create a conclusive mandatory presumption. A mandatory presumption is one that requires the fact finder[2] to find an elemental fact upon proof of a predicate fact, or requires an accused to disprove the elemental fact once the predicate fact has been shown by the state. *Francis v. Franklin*, 471 U.S. 307, 314 n.2, 105 S.Ct. 1965, 1971 n.2 (1985). A mandatory presumption that eliminates the State's burden of proof of the elemental fact, or shifts the burden on the accused to disprove the elemental fact, is deemed unconstitutional. *Carella v. California*, 491 U.S. 263, 109 S.Ct. 2419 (1989); *Sandstrom v. Montana*, 442 U.S. 510, 99 S.Ct. 2450 (1979); *Francis v. Franklin*, 471 U.S. 307, 105 S.Ct. 1965 (1985). Texas courts recognize this proposition of law. *See e.g., Lowry v. State*, 692 S.W.2d 86 (Tex. Cr. App. 1985)(Penal Code Sec. 25.05(f) providing that it is an affirmative defense to criminal nonsupport that actor could not provide support violated due process clause by shifting to defendant the burden of disproving that element of the offense).

Section 159.201 of the Texas Tax Code provides that a dealer commits an offense if the dealer possesses a taxable substance on which the tax imposed by this chapter has not been paid. The status of "dealer" is clearly one of the elements of the offense that the state must prove. *See Bass v.*

---

[2] Although the fact finder in this case was the trial court, Texas law requires sufficient evidence independent of the guilty plea itself before a defendant may be found guilty of a felony offense. *See* TEX. CRIM. PROC. CODE ANN. art. 1.15 (Vernon 1995).

State, 830 S.W.2d 142, 148 (Tex. App. - Houston [14th Dist.] 1992, pet. ref'd). Therefore, dealer is an "elemental fact." Likewise, the act of possessing more than seven grams of a controlled substance is the predicate fact. The state's burden of proof to show that the accused is a dealer is therefore eliminated by proof of the predicate fact that the accused possessed more than seven grams of a controlled substance. This denies the defendant due process of law. Because of the way the term "dealer" is defined by the statute, a defendant charged with possessing more than seven grams of a controlled substance is completely foreclosed from contesting the fact that he is not a drug "dealer". A defendant may be charged and convicted for being a tax avoiding drug dealer even though he or she may have had more than seven grams of a controlled substance strictly for personal use.

B. The presumption created by operation of TEX. TAX CODE ANN. §§159.201 and 159.001(3), even if permissive only, is irrational and arbitrary.

In the alternative, Section 159.001(3) is unconstitutional because the statutory permissive presumption of "dealer" status is not rationally related to possession of seven or more grams of a controlled substance. A statute creating a permissive presumption of fact that is an element of the offense may be established by proof of an underlying fact. However, this presumption of an elemental fact is unconstitutional if the underlying fact is not rationally related to the element of the offense. *Leary v. United States*, 395 U.S. 6, 33, 89 U.S. 1532, 1546 (1969). A statutory presumption is irrational or arbitrary unless there is substantial assurance that the presumed fact is more likely than not to flow from the provided fact upon which it

depends. *Leary*, 395 U.S. at 36, 89 S.Ct. at 1548. In *Leary*, this Court applied this standard to a tax on the possession of illegally imported marijuana. The Court held the statutory presumption that mere possession was sufficient to prove knowledge that the marijuana was illegally imported was unconstitutional, concluding that knowledge of its illegal importation was not more likely than not to flow from the act of possession. *Leary*, 395 U.S. at 54, 89 S.Ct. at 1557. *See Turner v. United States*, 396 U.S. 398, 90 S.Ct. 642 (1970)(Statutory presumption that unexplained possession of cocaine is sufficient proof of trafficking offended due process.).

The statute in the case at bar assumes that the mere possession of a certain quantity is sufficient to establish a defendant's status as a drug dealer. The conclusion that one is a dealer does not flow, more likely than not, from the fact that they possess more than seven grams of a controlled substance. Even a cursory sampling of drug cases teaches us that there is no magic quantity that can distinguish between those defendants who possess drugs for their personal use versus those who deal drugs to others. A "dealer" may be the corner crack purveyor selling one or two rocks or a member of a major Colombian cartel. Likewise, a person who uses drugs without selling them may possess a controlled substance in large or small quantities.

It is pure folly to suggest, without any evidence, that those who possess less than seven grams of a controlled substance are not dealers and those that possess 7.01 grams or more are drug dealers. Significantly, the statute makes no distinction between the various types of drugs. *See* TEX. TAX. CODE ANN. §159.001(3)(A)(Vernon 1995). The seven gram cut-off point makes a "dealer" out of anyone who possesses such weight variable drugs as LSD, morphine, codeine, cocaine, opium, and heroin. *See* TEX. HEALTH &

SAFETY CODE ANN. §481.002 (Vernon 1995). A defendant who possesses over seven grams of LSD will, more than likely, prove to be a "dealer", whereas a defendant who possesses over seven grams of cocaine may not. It is this arbitrariness and irrationality that renders the statute unconstitutional.

CONCLUSION

Section 159.201 of the Texas Tax Code, when used in conjunction with the Section 159.001(3) definition of "dealer", operates to deny defendants due process of law under the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

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October Term, 1995

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THE STATE OF TEXAS,

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Petition For Writ of Certiorari To the Texas Court of Appeals for the First Court of Appeals District

PETITION FOR WRIT OF CERTIORARI

OPINION

Judgment affirmed and Opinion filed August 3, 1995

In The

Court of Appeals

For The

First District of Texas

NOS. 01-94-00261-CR
01-94-00262-CR

LARRY CAMPBELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 344th District Court
Chambers County, Texas
Trial Court Cause Nos. 7891 & 7892

OPINION

Appellant, Larry Campbell, was indicted in cause number 7891 for the offense of aggravated possession of cocaine; the indictment alleged he used or exhibited a deadly weapon, namely a firearm, during the commission of

the offense. Appellant was indicted in cause number 7892 for failure to pay a controlled substance tax; the indictment again alleged he used or exhibited a firearm during the commission of the offense. The two indictments were consolidated for trial.

After the trial court denied his motion to suppress, appellant entered a plea of nolo contendere to both charges. The trial court made affirmative findings that a deadly weapon was used during the commission of both offenses. The trial court then assessed punishment in cause number 7891 at 10-years confinement and a $1000 fine and in cause number 7892, at 5-years confinement and a $52,800 fine. We affirm.

Waiver of complaints on appeal

In the absence of a plea bargain agreement, a voluntary plea of guilty waives all nonjurisdictional defects occurring *before* the entry of the guilty plea. *Jack v. State,* 871 S.W.2d 741, 743 (Tex. Crim. App. 1994). Under this rule, commonly known as *the Helms*[1] rule, nonjurisdictional defects are waived by pleas of either guilty or nolo contenders. *Jack,* 871 S.W.2d at 742.

Here, appellant pled nolo contendere to both charges without an agreed recommendation on punishment. Appellant gave his plea in open court and signed the written plea admonishments. Therefore, he has waived his right to complain on appeal of defects which are not jurisdictional that occurred before the entry of his plea.

a. Jurisdictional Defects for Purposes of the *Helms* Rule

We are not dealing here with defects which deprive the trial court of jurisdiction. Rather, we are addressing jurisdictional defects for purposes of the *Helms* rule, where a jurisdictional defect is, by definition, one which may be raised on appeal despite the voluntary entry of a plea of guilty. Jurisdictional defects include some errors of constitutional dimension, but exclude others. The basis for distinguishing which constitutional error is "jurisdictional" was explained by the Supreme Court in *Menna v. New York*, 423 U.S. 61, 62 n.2, 96 S. Ct. 241, 242 n.2 (1975) (holding that a double jeopardy claim was not waived by the entry of a plea of guilty):

> The point of these cases is that a counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent, it quite validly removes the issue of factual guilt from the case. In most cases, factual guilt is a sufficient basis for the State's imposition of punishment. *A guilty plea, therefore, simply renders irrelevant those constitutional violations*

---

[1] *Helms v. State*, 484 S.W.2d 925 (Tex. Cr. App. 1972).

> *not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is*

> *validly established. Here, however, the claim is that the State may not convict petitioner no matter how valid his factual guilt is established.* The guilty plea, therefore does not bar the claim.
>
> (Emphasis added.)

Menna relied Upon *Blackledge v. Perry,* 417 U.S. 21, 30, 94 S. Ct. 2098, 2103 (1974), for the proposition that "[w]here the State is precluded by the United States Constitution from haling a defendant into court on a charge, federal law requires that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty." *Menna,* 423 U.S at 62, 96 S. Ct. at 242. In *Blackledge,* the Supreme Court had distinguished between cases where the constitutional error had been coerced confessions or tainted indictments and those cases where the constitutional error involved the "right not to be haled into court at all." 417 U.S. at 30, 94 S. Ct. at 2104. Error which may be raised on appeal despite a plea of guilty is, thus, error of a constitutional dimension which goes "to the very power of the State to bring the defendant into court to answer the charge brought against him." Id. at 30, 94 S. Ct. at 2103.

The Court of Criminal Appeals first applied *Menna* within the context of a post-conviction writ of habeas corpus proceedings *See Ex parte Green,* 548 S.W.2d 914, 915 (Tex. Crim. App. 1977) (addressing a claim of violation of the doctrine of carving, a Texas common-law variety of double jeopardy protection which no longer exists).[2] Judge Clinton included *Menna* in his warning that not all antecedent constitutional violations were waived by the *Helms* rule in

King v. State, 687 S.W.2d 762, 767 n.3 (Tex. Crim. App. 1985) (Clinton, J., concurring).[3]

---

[2] The carving doctrine was abandoned in *Ex parte McWilliams,* 634 S.W.2d 815, 824 (Tex. Crim. App. 1980) (op. on reh'g).

[3] Judge Clinton's understanding of the *Helms* rule was adopted by the full court in *Jack v. State,* 871 S.W.2d at 742-44.

The Fifth Court of Appeals relied upon *Menna* in holding that a claim of double jeopardy was not waived by the entry of a voluntary plea of guilty. *Harrison v. State,* 721 S.W.2d 904, 905 (Tex. App.--Dallas 1986), *rev'd on other grounds,* 788 S.W.2d 18, 24 (Tex. Crim. App. 1990). This Court held that attacks on the constitutionality of the controlled substances tax statute were not waived by a plea of guilty in *Lopez v. State,* 837 S.W.2d 863, 865 (Tex. App.--Houston [lst Dist.] 1992, no pet.).

Accordingly, we now hold that a claim is jurisdictional for purposes of the *Helms* rule, when it goes to the very power of the State to bring the defendant into court to answer the charge against him. This includes claims of double jeopardy and facial unconstitutionality of the statute prescribing the offense alleged, but does not include constitutional violations in obtaining evidence, defects in the indictment, or sufficiency of the evidence. We now determine whether appellant has raised jurisdictional defects or waived his appellate complaints.

b. Violations of Federal Due Process

In points of error one, three, and four, appellant contends the controlled substance tax statute, TEX. TAX CODE ANN. §§ 159.001, 159.101, 159.201 (Vernon 1992), is unconstitutional because the statute violates his right to due process under the United State Constitution.

1. Tax on foreign property

In his first point of error appellant challenges the constitutionality of the controlled-substance tax statute that required him, a nonresident of Texas, to pay a property tax on cocaine that did not obtain a situs in Texas.

Appellant was convicted under TEX. TAX CODE ANN § 159.201 (Vernon 1992) that provides a dealer commits an offense if the dealer possesses a taxable substance on which the tax imposed by the code has not been paid. Section 159.101 sets forth the taxes to be imposed on the possession, purchase, acquisition, importation,

manufacture, or production by a dealer of a taxable substance. TEX. TAX CODE ANN. § 159.101 (Vernon 1992). A taxable substance is defined as, among other things, a controlled substance under TEX. HEALTH & SAFETY CODE ANN. § 481.002 (Vernon 1992). TEX. TAX CODE ANN. § 159.001 (Vernon 1992).

Appellant argues that he was a resident of Louisiana, the controlled substance was only temporarily in

Texas, and the substance did not acquire situs in Texas.[4] He contends,- therefore, the tax imposed on him was in violation of the due process clause, and the tax was unconstitutional. Appellant is not contending the statute is facially unconstitutional, that is, it is unconstitutional under every circumstance to which it is applied. Rather, he contends it is only unconstitutional as it was applied to him. Therefore, appellant's complaint is not jurisdictional for purposes of the *Helms* rule. Appellant has waived his first point of error.

Accordingly, we overrule point of error one.

2. Presumption of Dealer Status

In points three and four, appellant contends that his federal due process rights were violated because TEX. TAX CODE ANN. § 159.001 (Vernon 1992) contains either a mandatory or permissive statutory presumption. Appellant specifically targets the definition of "dealer:"

> (3) "Dealer" means a person who in violation of the law of this state imports into this state or manufactures, produces, acquires, or possesses in this state:
>
> (A) seven grams or more of a taxable substance consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance; ...

[4] There is no evidence in the record of how long the cocaine was in Texas or of how it came into appellant's possession.

TEX. TAX CODE ANN. § 159.001(3)(A) (Vernon 1992). Appellant's particular complaint is that the statute sets up an unconstitutional presumption that one who possesses more than seven grams of a controlled substance is a dealer.

It appears that appellant has raised an attack on the facial constitutionality of the statute under which he was prosecuted. We are, therefore, required to address appellant's third and fourth points of error on the merits. *See Lopez*, 837 S.W.2d at 865 (where this Court addressed several attacks of the constitutionality of the same statute). When an appellate court is called upon to determine the constitutionality of a statute, the initial presumption is that the statute is constitutional. *Id.*

Appellant argues that the statute establishes a presumption which relieves the State from proving every element of the offense beyond a reasonable doubt. The State responds that the statute provides a *definition* of dealer, rather than a *presumption* arising from an underlying factual predicate. The State asserts that appellant's argument is similar to the one raised and rejected in *Forte v. State*,, 707 S.W.2d 89, 93-94 (Tex. Crim. App. 1986) (holding that the definition of intoxication, replacing the former presumption, was not a presumption at all). We agree.

The legislature has defined the offense of possession of an item if tax unpaid as applicable to "a person

who in violation of the law of this state imports into this state or manufactures, produces, acquires, or possesses in this state seven grams or more of a taxable substance consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance." TEX. TAX CODE ANN. §§ 159.001(3)(A), 159.201(a) (Vernon 1992). Appellant has not demonstrated any reason why the legislature's determination to tax those who unlawfully possess seven grams or more of a controlled substance is unsound. Appellant has failed to rebut the presumption of constitutionality enjoyed by legislative enactments. *See Lopez*, 837 S.W.2d at 865-67.

Therefore, we find no facial constitutional defect in the statutory definition of "dealer." We overrule points of error three and four.

c. Lack of Jurisdiction to Tax Appellant's Property

In point of error two, appellant contends his conviction for failure to pay the controlled substance tax is invalid because, under TEX. TAX CODE ANN. § 11-01 (Vernon 1992), the State of Texas did not have jurisdiction to tax his property. Section 11.01(c) authorizes the State to tax personal property if it is in the State for longer than a temporary period. Appellant contends the cocaine was only temporarily in Texas.[5] Appellant does not complain that the statute is facially unconstitutional; instead, he argues that it is unconstitutional as applied to him because his property was not subject to taxation under the Tax Code. appellant's complaint is not jurisdictional for purposes of *the Helms* rule; therefore, he has waived it on appeal.

We overrule point of error two.

d. Denial of Motion to Suppress Evidence

In points of error five and six, appellant contends the trial court erred by denying his motion to suppress the cocaine because his detention by the police was not lawful and because he did not voluntarily consent to search the car in which the cocaine was found. Because appellant pled nolo contendere without an agreed recommendation on punishment, he has waived for review on appeal any error regarding the denial of his motion to suppress. Wh*eeler v. State,* 628 S.W.2d 800, 803 (Tex. Crim. App. 1982). Any error in denying a motion to suppress evidence is not jurisdictional for purposes of the *Helms rule. Shallhorn v. State,* 732 S.W.2d 63610 637 (Tex. Crim. App. 1987) (finding that plea of guilty without plea bargain agreement waived review of pretrial motion to suppress confession). Appellant waived his fifth and sixth points of error.

We overrule points of error five and six.

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[5] The record is silent as to when and where appellant obtained the cocaine.

Conclusion

We affirm the court's judgment in cause numbers 7891 and 7892.

/s/ Tim Taft
Tim Taft
Justice

Chief Justice Oliver-Parrott and Justice O'Connor also participating.

Do not publish. TEX. R. APP. P. 90.

Judgment rendered and opinion delivered **AUG - 3 1995**
True Copy Attest:

/s/_____
Margie Thompson
Clerk of Court

OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS

October 11, 1995

COA#: 01-94-00261-CR

RE: Case No. 1101-95

STYLE: CAMPBELL, LARRY

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

Troy C. Bennett, Jr., Clerk

COURT OF CRIMINAL APPEALS
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STATUTORY MATERIAL

TX TAX s 159.001
V.T.C.A., Tax Code § 159.001

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
TAX CODE
TITLE 2. STATE TAXATION
SUBTITLE E. SALES, EXCISE, AND USE TAXES
CHAPTER 159. CONTROLLED SUBSTANCES TAX
SUBCHAPTER A. GENERAL PROVISIONS

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Current through end of 1995 Reg. Sess.

§ 159.001. Definitions

In this chapter:

(1) "Controlled substance' has the meaning assigned by Section 481.002, Health and Safety Code.

(2) "Counterfeit substance' has the meaning assigned by Section 481-002, Health and Safety Code.

(3) "Dealer" means a person who in violation of the law of this state imports into this state or manufactures, produces, acquires, or possesses in this state:

(A) seven grams or more of a taxable substance consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance;

(B) fifty dosage units or more of a taxable substance not commonly sold by weight, consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance; or

(C) more than four ounces of a taxable substance consisting of or containing marihuana.

(4) "Marihuana" has the meaning assigned by Section 481.002, Health and Safety Code.

(5) "Simulated controlled substance" has the meaning assigned by Section 482.001, Health and Safety Code.

(6) "Tax payment certificate" means a stamp or other device provided by the comptroller under Section 159.003 of this code for use under this chapter.

(7) "Taxable substance" means a controlled substance, a counterfeit substance, a simulated controlled substance, or marihuana, or a mixture of any materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marihuana.

(8) "Dosage unit" means a tablet, pill, capsule, via], ampule, or other identifiable or separated unit designed or packaged to be used, taken, or ingested at one time.

CREDIT(S)

1992 Main Volume

Added by Acts 1989, 71st Leg., ch. 1152, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, § 284(45), (65), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 705, § 20, eff. Sept. 1, 1991.

1996 Pocket Part

Copr. West 1996 No claim to orig. U.S. govt. works
TX TAX s 159.001

Amended by Acts 1993, 73rd Leg., ch. 1031, § 23, eff. Sept. 1, 1993.

HISTORICAL AND STATUTORY NOTES

1996 Pocket Part

1993 Legislation

The 1993 amendment, added a new subd. (3)(B) and redesignated former subsec. (3)(B) as (3)(C), and added subd. (8).

1992 Main Volume

Acts 1991, 72nd Leg., ch. 14, in subds. (1), (2), and (4), substituted "Section 481.002, Health and Safety Code" for "Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)", and in subd. (5), substituted "Section 482.001, Health and Safety Code" for "Section 1, Chapter 306, Acts of the 68th Legislature, Regular

Session, 1983 (Article 4476-15b, Vernon's Texas Civil Statutes)".

Acts 1991, 72nd Leg., ch. 705, § 20 made the same changes; and in subsec. (3)(B) substituted "more than four ounces" for "four ounces or more".

V. T. C. A., Tax Code § 159.001

TX TAX § 159.001

END OF DOCUMENT

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TX TAX s 159. 101

V.T.C.A., Tax Code § 159. 101

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
TAX CODE
TITLE 2. STATE TAXATION
SUBTITLE E. SALES, EXCISE, AND USE TAXES
CHAPTER 159. CONTROLLED SUBSTANCES TAX
SUBCHAPT'ER B. IMPOSITION, RATE, AND PAYMENT OF TAX

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Current through end of 1995 Reg. Sess.

§ 159. 101. Tax Imposed; Rate of Tax

(a) A tax is imposed on the possession, purchase, acquisition, importation, manufacture, or production by a dealer of a taxable substance on which a tax has not previously been paid under this chapter.

(b) The rate of the tax is:

(1) $200 for each gram of a taxable substance consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance;

(2) $3.50 for each grain of a taxable substance consisting of or containing marijuana; and

(3) $2,000 on each 50 dosage units, or portion of 50 dosage units, if the total amount is less than 50 dosage units, of a controlled substance that is not sold by weight.

(c) The tax becomes due immediately when a dealer possesses, purchases, acquires, manufactures, or produces in this state or imports into this state the taxable substance on which the tax has not previously been paid.

(d) In determining the total weight of taxable substance, a part of a gram remaining after the measurement of whole grams is considered as one gram.

(e) For purposes of this section, if a taxable substance consists of a mixture containing both marihuana and another substance listed in the definition of taxable substance provided by Section 159.001 of this code, the taxable substance is taxable under Subsection (b)(1) of this section and not under Subsection (b)(2) of this section.

(f) If a determination made under this chapter becomes final without payment of the amount of the determination being made, the comptroller shall add to the amount a penalty of 10 percent of the amount of the tax and interest.

(g) In a redetermination proceeding held or a judicial proceeding brought under this chapter, a certificate from the comptroller that shows the issued determination is prima facie evidence of:

(1) the determination of the stated tax or amount of the tax;

(2) the stated amount of the penalties and interest; and

(3) the compliance of the comptroller with this chapter in computing and determining the amount due.

(h) The suppression of evidence on any ground in a criminal case that arises out of facts on which a determination is made under this chapter or the dismissal of criminal charges in such a case does not affect a determination made under this chapter.

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CREDIT(S)

1992 Main Volume

Added by Acts 1989, 71st Leg., ch. 1152, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 484, § 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 705, § 21, eff. Sept. 1, 1991.

1996 Pocket Part

Amended by Acts 1995, 74th Leg., ch. 1000, § 57, eff. Oct. 1, 1995.

HISTORICAL AND STATUTORY NOTES

1996 Pocket Part

1995 Legislation

The 1995 amendment deleted former subsec. (f) and redesignated subsecs. (g) through (i) as subsecs. (f) through (h), respectively.

Sections 74(a) to (c) and 75 of the 1995 amendatory act provides:

"See. 74. (a) The change in law made by this Act does not affect the collection or the enforcement of the payment of taxes imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection of those taxes. This subsection does not apply to the change to Section 201.201, Tax Code, as amended by this Act, for taxes made due by that section in the second month after the effective date of that section.

"(b) The change in law made to Chapter 159, Tax Code, by this Act applies only to a violation of the penal law of this state that occurs on or after the effective date of this Act. A violation of the penal law of this state occurs on or after the effective date of this Act if any element of the violation occurs on or after that date.

"(c) A violation of the penal law of this state that occurs before the effective date of this Act is governed by the law in effect at the time the violation occurred, and that law is continued in effect for that purpose."

"Sec. 75. If legislation is enacted transferring the responsibilities of the treasurer to the comptroller, the comptroller shall administer this Act consistent with that legislation.'

1992 Main Volume

Acts 1991, 72nd Leg., ch. 484, § I added subsec. (b)(3); and inserted "possesses" following "when a dealer".

Acts 1991, 72nd Leg., ch. 705, § 21 added subsecs. (f) to (i).

V. T. C. A., Tax Code § 159. 1 01

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SUBCHAPT'ER C. CRIMINAL PROVISIONS

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Current through end of 1995 Reg. Sess.

§ 159.201. Possession of Item if Tax Unpaid

(a) A dealer commits an offense if the dealer possesses a taxable substance on which the tax imposed by this chapter has not been paid.

(b) An offense under this section is a felony of the third degree. In addition to the fine provided by law for a felony of the third degree, a person convicted of an offense under this section shall be fined an amount equal to the amount of tax due and unpaid on the taxable substance that is the subject of the offense.

(c) An indictment for an offense under this section may be presented within six years from the date of the offense and not afterward.

CREDIT(S) 1992 Main Volume Added by Acts 1989, 71st Leg., ch. 1152, § 1, eff. Sept. 1, 1989. V. T. C. A., Tax Code § 159.201

TX TAX § 159.201

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